

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Enforcement Division

San Francisco, California
Date: October 25, 2018
Resolution UEB-003

R E S O L U T I O N

**RESOLUTION UEB-003. ADOPTION OF A CORE
TRANSPORT AGENT CITATION PROGRAM TO
ENFORCE COMPLIANCE WITH THE STANDARDS FOR
VERIFICATION OF CHANGE IN PROVIDER IN
COMMISSION DECISION 18-02-002, PURSUANT TO
PUBLIC UTILITIES CODE SECTION 985.**

Summary

The California Public Utilities Commission (CPUC or Commission) has on occasion authorized its staff to enforce compliance with various regulatory requirements. This resolution adopts a citation program applicable to Core Transport Agents (as described below) for enforcing compliance with the standards for verification of change in provider requirements in Commission Decision (D.) 18-02-002, pursuant to Public Utilities (PU) Code Section 985 and Commission regulations applicable to this code section. This resolution authorizes the Director of the Consumer Protection and Enforcement Division (CPED) or his/her designee to serve citations to core transport agents (CTA) subject to the above requirements in an amount of \$1,000 for each violation. This citation program does not cover all violations that may occur subject to D.18-02-002 and PU Code Section 985, nor is it intended to.

The citation program provides a means for the Commission's enforcement staff to quickly obtain provider compliance as a precursor to suspension and revocation. In addition, it can act as deterrence against ongoing violations. Nothing in this Resolution diminishes, alters, or reduces the Commission's existing authority to implement and administer the CTA program.

Background

The California natural gas procurement market was deregulated in February 1991 by D.91-02-040. This decision followed pilot aggregation programs established in November 1990 by D.90-11-061. D.91-02-040 offered core gas customers (residential and small commercial customers) the opportunity to aggregate their loads in order to participate in competitive gas supply markets through CTAs. Customers who elect to take CTA gas supply service from one of the many for-profit independent CTA companies in California still pay their utility for gas delivery service on the utility's distribution pipelines. Depending on the billing option chosen, customers may receive bills from their utility, the CTA, or both. Senate Bill (SB) 656 (Statutes of 2013, Chapter 604) added PU Code Sections 980 through 989.5, extending various consumer protections currently in place for customers who purchase

electricity directly from third-party electrical suppliers to core gas customers. Specifically, PU Code Section 985 required the Commission to adopt minimum standards related to change in providers for CTAs offering gas supply service to core gas customers.

The Commission adopted rules to implement the minimum standards set forth in PU Code Section 985 in D.18-02-002, which also found that in adopting such rules, the Commission may go beyond the minimum standards that are set forth in the code section, and as permitted by PU Code Section 985(h) “may adopt additional core gas consumer protection standards that are in the public interest.”¹ D.18-02-002 also found that since the electric service provider (ESP) marketplace and entities are comparable to CTA marketplace and entities, similar kind of rules patterned after ESP provisions contained in PU Code Section 366.5 should be adopted for the CTAs.²

The CPUC’s Consumer Affairs Branch (CAB) monitors potential abuse by CTAs through tracking complaints received via the Commission’s website, email, phone calls, facsimile, and postal mail. The citation program adopted in this Resolution provides an expedited way to correct inappropriate behavior without the necessity of an Order Instituting Investigation (OII). CPED’s Utilities Enforcement Branch (UEB) investigates alleged violations of the PU Code, Commission regulations and other applicable laws by regulated entities, and brings enforcement actions before the Commission to seek appropriate remedies for consumers and/or penalties. As the citation program is ministerial (a grant of specific authority by the Commission), this Resolution establishes detailed procedures in the most comprehensive way possible.

D.18-02-002 found that a citation process should not be used due to potential overlap and duplication with the suspension and revocation process.³ However, if UEB believes a citation process should be implemented as a precursor to the suspension and revocation process, UEB may propose to establish such a procedure by way of a Resolution.⁴

UEB believes that a citation program is warranted because it is a tool to quickly obtain provider compliance as a precursor to suspension and revocation. In addition, it can act as deterrence against ongoing violations.

D.18-02-002 adopted standards for verification of change in provider requirements that require CTAs to keep a record of the confirmation of a change in provider for three years from the date of that confirmation, and make those records available, upon request, to the customer and to the Commission in the course of a Commission investigation of a customer complaint.⁵ For example, if a consumer complains that his/her gas service provider was switched without authorization, a practice referred to as “slamming,” Commission staff may utilize the

¹ D.18-02-002, pp. 99-100.

² D.18-02-002, pp. 106-107.

³ D.18-02-002, Finding of Fact 20, p. 162.

⁴ D.18-02-002, Finding of Fact 21, p. 162, Ordering Paragraph 5c, p. 174.

⁵ D.18-02-002, pp. 105-112, Conclusion of Law 56, p. 167, and Ordering Paragraph 3, p.171.

verification records to determine whether the CTA properly followed the standards for verification of change in provider.

Verification of Change in Provider

CTAs are required to obtain a consumer's authorization prior to switching their gas service provider. Such authorization shall follow the standards described below:

Standards for Verification of Change in Provider⁶

- A. Upon adequate notice supplied by a core transport agent to the gas corporation providing physical delivery service, core gas customers who are eligible for core transport service may change their energy supplier. The change by the customer of its energy supplier shall take place as described below.
- B. To verify the customer's change in provider, the CTA shall obtain the following information from the customer. This information—whether obtained by voice, electronically, or in writing—shall be solicited in the customer's primary language.
 - 1) The name of the customer of record.
 - 2) The name of the person requesting that a change of provider be made.
 - 3) That the person requesting the change of provider is authorized to do so.
 - 4) The name of the new provider that the customer is requesting.
 - 5) The account number of the customer requesting the change of provider.
 - 6) The date of the customer's request to change the provider.
 - 7) An acknowledgement from the customer that the only change being requested by the customer is a change of provider.
- C. No change in the core transport agent for a non-residential core gas customer may be made until one of following means of confirming the change has been completed.
 - 1) Independent third-party telephone verification as described in section D of these rules.
 - 2) Receipt of a written confirmation received in the mail from the consumer after the consumer has received an information package confirming the agreement.
 - 3) The customer signs a document fully explaining the nature and effect of the change in service.
 - 4) The customer's consent is obtained through electronic means, including, but not limited to, computer transactions.
- D. No change in the core transport agent for a residential customer may be made over the telephone until the change has been confirmed by an independent third-party verification company, as follows:
 - 1) The third-party verification company shall meet each of the following criteria:

⁶ D.18-02-002, pp. 105-112, Conclusion of Law 56, p. 167, and Ordering Paragraph 3, p. 171.

- a) Be independent from the entity that seeks to provide the new service.
 - b) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by an entity that seeks to provide the new service.
 - c) Operate from facilities physically separate from those of the entity that seeks to provide the new service.
 - d) Not derive a commission or compensation based upon the number of sales confirmed.
- 2) The entity seeking to verify the sale shall do so by connecting the resident by telephone to the third-party verification company or by arranging for the third-party verification company to call the customer to confirm the enrollment.
 - 3) The third-party verification company shall obtain the customer's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data described in section B. The record shall be available to the customer upon request. Information obtained from the customer through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved customer against the entity or its employees who are responsible for the violation.
- E. No change in the core transport agent for any residential customer may be made via an Internet transaction, in which the customer accesses the website of the core transport agent, unless both of the following occur with respect to confirming the change:
- 1) In addition to the verification data described in section B above, and any other information gathered in the course of the transaction, the customer shall be asked to read and respond to a separate screen that states, in 14-point type or larger, the following: "I acknowledge that in signing this contract or agreement, I am voluntarily choosing to change the entity that supplies me with natural gas."
 - 2) The separate screen shall offer the customer the option to complete or terminate the transaction.
- F. No change in the core transport agent for any residential customer may be made via a written transaction unless the change has been confirmed, as provided in this section F. In order to comply with this section F, in addition to the verification data described in section B above and any other information gathered in the course of the transaction, and in addition to any other signature required, the customer shall be asked to sign and date a document separate from that written transaction, containing the following words printed in 16-point type or larger: "I acknowledge that in signing this contract or agreement, I am voluntarily choosing to change the entity that supplies me with natural gas service." These words shall be written in the customer's primary language.
- 1) The acknowledgment document described in this section F may not be included with a check or in connection with a sweepstakes solicitation.
- G. Any core transport agent offering natural gas service to residential and non-residential core customers that switches the natural gas service of a customer without the customer's consent shall be liable to the core transport agent offering natural gas service previously selected by the customer in an amount equal to all charges paid by the customer after the violation, and

shall refund to the customer any amount in excess of the amount that the customer would have been obligated to pay had the customer not been switched.

- H. A core transport agent shall keep a record of the confirmation of a change pursuant to section C, D, E, or F for three years from the date of that confirmation, and shall make those records available, upon request, to the customer, to the gas corporation, and to the CPUC.
- I. Public agencies are exempt from this rule adopted pursuant to PU Code Section 985 to the extent they are serving customers within their jurisdiction.
- J. Notwithstanding sections E and F above, the CPUC may require third-party verification for all residential changes to core transport agents if it finds that the application of sections E and F results in the unauthorized changing of a customer's gas service provider.
- K. A gas corporation is exempt from this rule for customers that default to the service of the gas corporation.
- L. Consistent with PU Code Section 985, core transport agents and gas corporations may charge for a change in service provider in the event of early termination of service, provided that any fee or penalty charged by the supplier associated with the early termination of service, shall be disclosed in the contract of the core transport agent or in the applicable tariff of the gas corporation.

Citation

The following procedures are adopted for the citation program:

- A. The Director of the CPED, or a designated CPED staff under the supervision of the Director, is hereby authorized to serve citations to core transport agents (CTA or Respondent) subject to the requirements D.18-02-002, pursuant to PU Code Section 985 for the following specified violations of those sections and applicable Commission regulations:
 - 1. Failure by the CTA to provide to the Commission a third party verification tape (TPV) or other verification of consumer consent (e.g. written consent, online acknowledgement, letter of agency, etc.) showing that a change in natural gas service provider has been made in compliance with Commission adopted change of provider verification requirements; or
 - 2. Failure by the CTA to verify the specific information below when obtaining consent:
 - a. the name of the customer of record;
 - b. the name of the person requesting that a change of provider be made;
 - c. confirmation that the person requesting the change of provider is authorized to do so;
 - d. the name of the new provider that the customer is requesting;
 - e. the account number of the customer requesting the change of provider;
 - f. the date of the customer's request to change the provider;

- g. an acknowledgement from the customer that the only change being requested by the customer is a change of provider.

The Director of CPED or his/her designee is authorized to draft a citation and present it to the CTA that is the subject of a consumer complaint submitted to the Commission.

If CPED finds that the CTA has either failed to provide a TPV or other verification of consumer consent (e.g., written consent, online acknowledgement, letter of agency, etc.), or failed to provide a TPV or other verification of consumer consent that meets the required criteria, CPED is hereby authorized to issue a citation and levy a \$1,000 fine consistent with the requirements set forth in PU Code Section 2107. Each TPV that fails to meet the criteria above is a separate violation. If a pattern of misconduct emerges, these violations or potential violations may be addressed by an Order Instituting Investigation, an Order to Show Cause, and/or other enforcement actions.

Content

- B. The citation served upon the CTA by CPED will include:
1. A specification of each alleged violation, including citation of the Resolution, Decision, Order, or PU Code Section allegedly violated;
 2. A statement of the facts upon which each alleged violation is based, including supporting documents;
 3. The amount of the fine;
 4. A statement that the CTA may pay the amount of the penalty set forth in the citation and the conditions for payment, or alternatively, the CTA may file an appeal of the citation within 30 days pursuant to Resolution ALJ-299.
 5. An explanation on how to file an appeal, including the CTA's right to have a hearing, to have a representative at the hearing, to request a transcript, and to request an interpreter; and
 6. The form for Notice of Appeal.

Service of Citation

- C. Citations will be served by first class mail to the CTA's designated regulatory contact. A copy of the citation will also be emailed to the CTA's designated regulatory contact.

Response

- D. Within 30 days after the date of the citation, the CTA shall remit the full amount of the penalty with notice to CPED, or serve a Notice of Appeal to CPED. Before the expiration of the 30-day deadline, CPED or an Administrative Law Judge (ALJ) may extend the time for response upon a showing of good cause.
- E. Unless otherwise specified, a requirement to notify CPED or to serve CPED means to send a written communication by U.S. Mail or an express mail service to the address specified in

the citation. **These written communications should not be filed with the Commission's Docket Office.** In addition to communications by mail service, CPED may allow electronic submissions.

Payment of Penalty; Default

- F. A CTA submitting payment of penalty shall mail or deliver the payment to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check or money order, payable to the California Public Utilities Commission. The CTA's representative shall write on the face of the check or money order "For deposit to the State of California General Fund per Resolution UEB-003."
- G. If the CTA pays the full amount of the penalty within the time allowed, the citation shall become final. Failure to pay the full amount of the penalty by the due date specified in the Notice or the extension date, or to file a Notice of Appeal will place the CTA in default, the citation shall become final, and the CTA will have forfeited its right to appeal the citation. A late payment is subject to a penalty of 10 percent. Payments are considered late if they are received after the due date specified in the Notice or after the extension date.

Appeal

- H. Resolution ALJ-299 sets forth the appeals process for all CPUC citation programs unless otherwise noted in Resolution ALJ-299. Any appeal of a citation issued under this Resolution shall be in accordance with the procedures set forth in Resolution ALJ-299.

Notice

In compliance with PU Code Section 311(g), the Commission on September 21, 2018 provided notice to all registered CTAs and/or interested parties on record that this draft Resolution is available at the Commission's website <http://www.cpuc.ca.gov/> and is available for public comment. Additionally, CPED informed these parties of the availability of the conformed Resolution at the same website.

Comments

The East Bay Community Law Center (EBCLC), the only party that filed comments, supported the draft resolution. Although EBCLC expressed concerns over the potential for electronic forgery with allowing "consent through electronic means," it acknowledged that this provision is an existing standard adopted in D.18-02-002.

THEREFORE, IT IS ORDERED that:

1. The Citation Program described above is hereby adopted.
2. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on October 25, 2018 and the following Commissioners approved it:

/s/ ALICE STEBBINS

ALICE STEBBINS
Executive Director

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners